

Preservation Matters!

CEQA & Historical Resources

Workshop sponsored by the
City of Ventura
and the
California Office of Historic Preservation

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What is CEQA?

What does it have to do with historical resources?



Statute: Public Resources Code §§21000-21178

Guidelines: California Code of Regulations

Title 14, Chapter 3

§§15000-15387

Basic Purposes of CEQA

- **Inform** governmental decision makers and the public about the potential, significant environmental effects of proposed activities
- **Identify** ways that environmental damage can be avoided or significantly reduced

Basic Purposes of CEQA

- **Prevent** significant, avoidable damage to the environment by alternatives or mitigation
- **Disclose** to public the reasons why a government agency approved the project if significant environmental effects are involved

What CEQA Does NOT Do

- CEQA does not prevent projects
- CEQA does not prevent the demolition or alternation of a historical resource



What is the Role of an Agency under CEQA?



- Identify lead agency for project
- Adopt CEQA procedures
- Procedures must include the formal and informal involvement of the public, and should be designed to receive and evaluate public comments on environmental issues related to an agency's activities (§15201)
- Requires lead agency to make an independent finding
- Determine whether historical resources exist

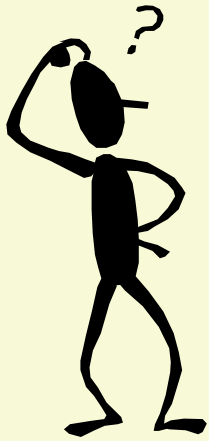
What is the Role of the Public

- Public enjoys a “privileged position” (Concerned Citizens of Costa Mesa, Inc. v. 32nd District Agricultural Assn., California Supreme Court 42 Cal. 3d 929, 936 (1986))
- “[A] paramount consideration is the right of the public to be informed in such a way that it can intelligently weigh the environmental consequences of any contemplated action and have an appropriate voice in the formulation of any decision.” (Mountain Lion Coalition v. California Fish & Game Com., 214 Cal. App. 3d 1043, 1051 (1989))
- Can make a “fair argument” based on “substantial evidence” that requires the agency to treat a resource as historical for the purposes of CEQA



In the Beginning. . . Is it a Project?

- A project is the the whole of an action which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment.



When does CEQA Apply?

- All discretionary projects undertaken by a public agency
- All discretionary projects undertaken by private parties
- All discretionary projects assisted by a public agency
- Presence of a historical resource does not “trigger” CEQA

When does CEQA not apply?

- CEQA does not apply to **ministerial** projects—even if the project will adversely impact a historical resource



Is the Project Ministerial?

- A ministerial project is one that requires only conformance with a fixed standard and requires little or no personal judgment by a public official
- It is an exemption
 - Ministerial projects require no further action under CEQA





Is there a Statutory Exemption from CEQA?

- Projects exempted by the Legislature
- Statutory exemption makes a project ministerial
- A project that falls within a statutory exemption is not subject to CEQA even if it has the potential to significantly affect the environment

Is there a Categorical Exemption from CEQA?



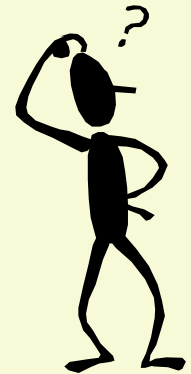
- Classes of projects identified by the Resources Agency that should be exempt from CEQA
- No further action is required under CEQA
 - **However, “a categorical exemption shall not be used if the project will cause a substantial adverse change in the significance of historical resource.”**

Categorical Exemptions

- Use of the Secretary of the Interior's Standards is a categorical exemption
- Notice of Exemption **may** be filed—
not required

Is the Project Discretionary?

- If there is a project. . .
- If the project is not ministerial. . .
- If exemptions do not apply. . .
- Then, the project is discretionary and the lead agency evaluates project to determine if there is a possibility that the project may have a significant effect on environment



Initial Study (IS)

- This is the point that the lead agency determines if there is a historical resource that **could** be significantly impacted by the project
- Elements of Initial Study
 - Project description
 - Environmental setting
 - Potential Environmental Effects
 - Discussion of Mitigations

Purpose of Initial Study

- Facilitate early environmental assessments
- Decide whether to prepare ND, MND, or EIR
- IS becomes the supporting decision for ND or EIR
- Avoid unnecessary EIRs by mitigating impacts
- Focuses an EIR on significant effects

Initial Study: The Two-Part Test

- Is there a historical or archaeological resource ?
- Would the project cause a substantial adverse change in the significance of the resource?
- If the answers to both are yes, then agency must decide how to proceed: Mitigated Negative Dec (MND) or Notice of Preparation (NOP) for an EIR



Initial Study ISSUES

- Failure to identify resources during IS
- Failure to consider the full range of significant “historical resources”
- Failure to adequately consider the potential for archaeological resources
- Inappropriate use of “discovery”

Basis for Negative Declaration

- No substantial evidence that project may result in a significant effect
 - Initial study (IS)
 - Supporting reports/studies
 - Other evidence in record
 - Neg. Dec is the agency's finding; the IS supports that finding

Basis for a Mitigated Negative Declaration (MND)

Initial Study shows potentially significant impacts, BUT:

- Revisions in project plans agreed to by applicant before public review would mitigate to below level of significance
- No substantial evidence in record of a significant effect of revised project
- No substantial evidence that mitigation will be inadequate

Basis for EIR

- Required if Project may have a significant impact on the environment

Legal Standard: Good-faith effort at full disclosure; but perfection not required

Fair Argument Standard

An EIR must be prepared when it can be:

- Fairly argued,
- Based on substantial evidence,
- In light of the whole record,
- that a project may have a significant environmental effect.

Case law

Architectural Heritage Association v. County of Monterey (2004) 122 Cal. App. 4th 1095) the Court made clear that the “fair argument” standard of review applicable to the preparation of an EIR applies to the question of whether a resource is to be treated as historic for purposes of CEQA

In summary:

Fair Argument standard applies to the question of:

- Whether a resource is historic
- Whether a project will cause a significant impact to the resource

What is a Historical Resource?



- Historical resources are recognized as part of the environment under CEQA
- The term historical resource is given a broad definition
 - CEQA Guidelines §15064.5



CEQA Criteria

- Resource listed in or determined eligible by the SHRC for listing in the [California Register](#);
- Resource included in a [local register](#) of historical resources;
- Resource identified as significant in an [historical resources survey](#) (status codes 3-5) shall be presumed to be historically or culturally significant;
- Any B,S,O,S,A,...which a lead agency determines to be historically significant...

California Register includes

- Resources listed by the SHRC;
- Properties listed in the National Register of Historic Places;
- Properties determined eligible for listing in the NR
- California Historical Landmarks beginning with #770; and
- California Points of Historical Interest and CHL prior to #770 if approved by SHRC

(a) For purposes of this section, the term “historical resources” shall include the following:

(2) A resource included in a **local register** of historical resources. . . . or identified as significant in an historical resources **survey** shall be **presumed** to be historically or culturally significant. **Public agencies must treat any such resource as significant unless the preponderance of evidence demonstrates that it is not historically or culturally significant.**

(a) For purposes of this section, the term “historical resources” shall include the following:

(3) Any object, building, structure, site, area, place, record, or manuscript which a lead agency determines to be historically significant or significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record. Generally, a resource shall be considered by the lead agency to be “historically significant” if the resource meets the criteria for listing on the California Register of Historical Resource.

(a) For purposes of this section, the term “historical resources” shall include the following:

(4) The fact that a resource is not listed in, or determined to be eligible for listing in the California Register of historical resources, not included in a local register of historical resources, or identified in an historical resources survey does not preclude a lead agency from determining that the resource may be an historical resource. . . .

Archeological Resources May be Historical Resources

- CEQA applies to effects on archaeological sites.
 - When a project will impact an archaeological site, a lead agency shall first determine whether the site is an historical resource.
 - If it is, potential adverse impacts to it must be considered.



Archeological Resources

May be Unique Archeological Resources, §15064.5(c)

- CEQA is confusing!
- If an archaeological site does not meet the criteria of a historical resource, but does meet the definition of a “unique archeological resource” as defined in PRC §21083.2 the site shall be treated in accordance with the provisions of that section.

How does CEQA define archeological resources?

- CEQA discusses two types of archeological resources:
 - a “unique archaeological resource”
 - an archeological resource that qualifies as a “historical resource” “Has yielded, or may be likely to yield information important in prehistory and history”



Unique or archaeological resource”?

A “unique” archeological resource is one that:

- Contains information needed to answer important scientific research questions
- Has a special and particular quality such as being the oldest of its type
- Is directly associated with a prehistoric or historic event or person

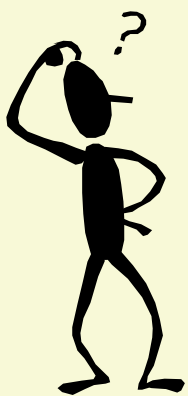
An archeological resource that is a “historical resource:

- Listed or determined eligible for California Register
- Listed in a “local register of historical resources”
- Evaluated as significant in an “historical resource survey”

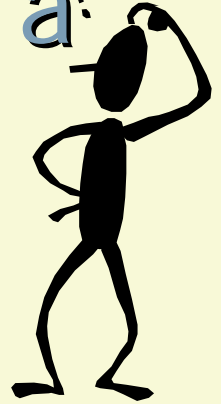
So, you have a historical or archaeological resource ...

Will there be a significant effect?

- Significant effect on the environment means a substantial, or potentially substantial, adverse change in any of the **physical** conditions within the area affected by the project including. . . objects of historic or aesthetic significance.



Will there be a Substantial Adverse Effect on the Significance of a Historical Resource?



- If the project will have no substantial adverse effect, the agency must issue a **Negative Declaration (Neg. Dec.)**
- Public review period



Will there be a Substantial Adverse Effect on the Significance of a Historical Resource?

- If the project will potentially have an adverse effect on historical resources, the lead agency **may** avoid preparing an **EIR** *if* it can develop mitigation measures to clearly avoid or mitigate the significant impact - **Mitigated Neg. Dec.**
- If the project involves a significant adverse change on a historical resource which can not be **mitigated**, lead agency will issue a Notice of Preparation (NOP) for an **EIR**.

Draft Environmental Impact Report/EIR

Must include:

- Project description, environmental setting, impacts
- Alternatives that would reduce or eliminate environmental effects - mitigations
- Describe all reasonable alternatives
- Consider direct, indirect, cumulative, growth-inducing effects
- “No project” scenario
- If historical resources are present, one alternative must be to preserve the resource

Public review period for DEIR

CEQA: Procedural and Substantive

- CEQA is primarily procedural
- CEQA is also substantive

Public agencies **must** deny approval of projects with significant environmental effects “if there are **feasible alternatives** or **mitigation measures**” that can substantially lessen or avoid those effects. (PRC 21002)

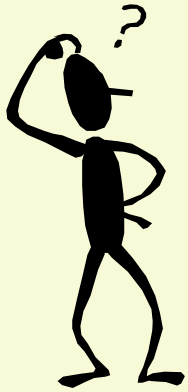
Feasible Alternatives

- A draft EIR must describe a **reasonable range of alternatives** to the project **or** project location that could **feasibly attain** most of the basic project objectives and would **avoid or substantially lessen any** of the significant environmental impacts of the proposed project.
- For **each** significant impact identified in the EIR, feasible measures to **avoid or substantially reduce** the project's environmental effect **must be discussed** CEQA Guidelines §15126.4(a))

Historical Resources & Mitigation

A lead agency **must** identify any potentially feasible measures to mitigate significant adverse changes in the significance of an historical resource

Any adopted mitigation measures **must** be made fully enforceable through permits, conditions, agreements, or other measures (CEQA Guidelines § 15064.5 (b) (3-5))



What is Mitigation?

- **Avoid** the impact altogether by not taking certain actions or parts of actions
- **Minimize** impacts by limiting the degree or magnitude of the action and its implementation
- **Rectify** the impact by repairing, rehabilitating or restoring the affected environment
- ◆ **Reduce or Eliminate** the impact over time by preservation and maintenance during the life of the action
- ◆ **Compensate** for the impact by replacing or providing substitute resources or environments

Mitigation Issues

- The demolition of a historical resource can **NOT BE MITIGATED** below the level of significant adverse impact. An EIR is required.
- **Mitigation May Not Be Deferred !!**

Closing CEQA Process

Lead agency must:

- Demonstrate it has prepared and circulated an adequate ND, MND, or EIR
- Take public comments into account
- Make *independent* findings
- Certify the final EIR

Goal of CEQA Process

- Disclose to decision makers and public the effects of the project if approved
- Certification of the EIR is not the same as project approval

More Information

- A Citizens Guide to Planning (includes section on CEQA)
 - www.ceres.ca.gov/planning/planning_guide/plan_index.html
- CEQAnet Database (searchable database of all environmental documents that the State Clearinghouse receives from public agencies)
 - www.opr.ca.gov/clearinghouse/Clearinghouse.html
- CEQA Web (everything you wanted to know about CEQA)
 - www.ceres.ca.gov/ceqa
- CEQA and Historical Resources (Office of Historic Preservation Technical Assistance Bulletin #1)
 - www.ohp.parks.ca.gov/?page_id=1069
- CEQA Deskbook: A step-by step guide on how to comply with the California Environmental Quality Act, Ronald E. Bass, Albert I. Herson, and Kenneth M. Bogdan, Solano Press Books

Contact Information

Michelle C. Messinger
Historian II – CEQA Coordinator
Local Government Unit
Office of Historic Preservation (OHP)
(916) 653-5099
mmessinger@parks.ca.gov